

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
(Charlottesville Division)**

CHRISTOPHER SEAMAN, *et al.*,

Plaintiffs,

v.

Civil Action No. 3:22-cv-6

THE COMMONWEALTH OF VIRGINIA, *et al.*,

Defendants.

**FAIRFAX COUNTY SCHOOL BOARD’S MOTION FOR LEAVE TO FILE  
BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS**

1. The Fairfax County School Board (“FCSB”), by counsel, respectfully requests leave of court to file a brief *amicus curiae* in support of Plaintiffs in this matter. FCSB certifies that it has sought consent to file this brief from counsel for all parties. Plaintiffs, by counsel, have consented to this motion. Defendants, by counsel, have indicated that they take no position on FCSB’s request or motion. A copy of FCSB’s proposed brief is attached as Exhibit A.

2. *Amicus* FCSB is the local school board which operates the Fairfax County Public Schools (“FCPS”). It is constituted by Art. VIII, Section 7 of the Constitution of Virginia. FCSB is designated as a corporate body, with, *inter alia*, the power to serve as a party in litigation, by section 22.1-71 of the Code of Virginia. *Amicus* FCSB is charged by law with the operation of and supervision of the public schools in its community. This brief was prepared solely by *Amicus* and its counsel and has been neither authored nor funded in whole or part by any party.

3. FCSB as *Amicus* has a direct interest in this matter. While it does not speak on behalf of the other school divisions in the Commonwealth, FCSB brings a well informed and substantively invested position to assist this Court. FCPS is the largest public school division in Virginia, and among the dozen largest divisions in the country. Operating almost 200 schools, FCPS educates

more than 187,000 students from pre-kindergarten through the twelfth grade. Over 28,000 FCPS students have disabilities for which they receive special education services under the Individuals with Disabilities Education Act, and over 7,000 more FCPS students have disabilities which render them in need of accommodations under Section 504 of the Rehabilitation Act of 1973 (“Section 504”). Among FCPS’ students with disabilities are hundreds and hundreds with serious medical conditions that render them at “high risk” for serious illness or death from respiratory infections such as COVID-19, according to CDC criteria. These include students with cystic fibrosis; leukemia or other cancers requiring chemotherapy or radiation; students with serious trachea and other respiratory conditions necessitating supplemental oxygen or tracheal suctioning in school; and those with dozens of other medical conditions compromising their immune systems. One of the student plaintiffs here, S.K., resides in Fairfax County and attends FCPS.

4. In its brief, FCSB points out the many ways that the issues raised by S.B. 739 are of tremendous practical importance not only with respect to whether the option of masking can be utilized in situations where medically and immune-compromised students cannot otherwise safely attend school, but much more broadly, whether the General Assembly can prohibit commonsense health, safety and educational measures employed by local school boards as a part of their Constitutional responsibility of supervision, and local control, under Art. VIII, Section 7 of the Constitution of Virginia. FCSB also explains that the emergency enactment clause of S.B. 739 was adopted in derogation of the four-fifths requirement prescribed by Art. IV, Section 13 of the Constitution of Virginia.

5. District Courts regularly allow *amicus* participation. *See, e.g., Jin v. Ministry of State Secretary*, 557 F. Supp. 2d 131, 136-37 (D.D.C. 2008) (citing *Smith v. Chrysler Fin. Co.*, 2003 WL 328719, at \*8 (D.N.J. 2003) (“District Courts have inherency authority to appoint or deny

*amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure.”); *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (“it is solely within the discretion of the Court to determine the fact, extent, and manner of participation by the amicus.”)); *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007) (citing *Bryant v. Better Business Bureau*, 923 F. Supp. 720, 727 (D. Md. 1996) (“Such non-party participants have ‘been allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.’”). Indeed, Virginia District Courts have routinely considered *amicus* briefs. *See, e.g., Tafas*, 511 F. Supp. 2d at 660-61 (granting five *amicus curiae* motions); *Virginia Uranium, Inc. v. McAuliffe*, 2015 WL 6143105, at \*4 (W.D. Va. 2015) (granting leave to file brief as *amicus curiae*); *Mansoor v. County of Albemarle*, 124 F. Supp. 2d 367, 386 (W.D. Va. 2000) (Same); *Sigmon Coal Co., Inc. v. Apfel*, 33 F. Supp. 2d 505, 506 (W.D. Va. 1998) (Same); *Kirchgessner v. Davis*, 632 F. Supp. 616, 617-18 (W.D. Va. 1986) (Same).

6. This motion and brief are being filed in advance of the March 7, 2022 hearing set by this Court and will not delay these proceedings or prejudice Defendants, who will have an opportunity to respond to the arguments made by FCSB at the hearing.

7. A sketch order granting this motion is attached.

WHEREFORE, Fairfax County School Board respectfully requests that this Court grant its request for leave to file the attached Brief *Amicus Curiae* in support of Plaintiffs in this matter.

Date: March 4, 2021

FAIRFAX COUNTY SCHOOL BOARD

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**Certificate of Service**

I hereby certify that on the 4<sup>th</sup> day of March, 2022, a true and correct copy of the foregoing Fairfax County School Board's Motion for Leave to File Brief *Amicus Curiae* in Support of Plaintiffs was filed electronically with the Clerk of the United States District Court for the Western District of Virginia, Alexandria Division, using the CM/ECF system, which will send a notification of such filing (NEF) to:

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